

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

August Image, LLC,

Plaintiff,

v.

Girard Entertainment & Media LLC and Keith  
Girard,

Defendants.

---

Case No.: 1:23-cv-1492

Related Case No.: 1-21-cv-09397-ER

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

Plaintiff, August Image, LLC (“August Image” or “Plaintiff”), by and through its undersigned attorneys, hereby prays for the following relief through its complaint, against all defendants, alleges as follows:

### **JURISDICTION AND VENUE**

1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101 *et seq.*
2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 1338 (a) and (b).
3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

### **PARTIES**

4. Plaintiff, August Image, is a New York limited liability company.
5. Plaintiff is informed and believes and thereon alleges that Defendant Girard Entertainment & Media LLC (“GEM”) is a New York limited liability company, having its principal place of business at 244 Fifth Avenue, Suite E124, New York, New York 10001.
6. Plaintiff is informed and believes and thereon alleges that Defendant Keith Girard (“Girard”) is an individual and the owner of GEM and a resident of New York, New York.
7. Girard and GEM own, operate, and are solely responsible for the content posted to the websites, <https://www.thenyindependent.com/>, <https://www.celebrityhealthfitness.com/>, and corresponding social media platforms.
8. Defendants Does 1 through 10, inclusive (collectively with GEM and Girard, “Defendants”), are other parties who have infringed Plaintiff’s copyright, have contributed to the infringement of Plaintiff’s copyright, or have engaged in one or more of the wrongful practices alleged herein. The true names, whether corporate, individual, or otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff, who therefore sues said Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.

9. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiff's rights and the damages proximately caused thereby.

**CLAIMS RELATED TO SUBJECT PHOTOGRAPH**

10. By virtue of contractual assignments with the respective photographers, Plaintiff is the sole and exclusive agent and representative for the licensing and use of certain original celebrity photographs (the "Subject Photograph"). Pursuant to that assignment, Plaintiff has full and complete authority to institute suit for the unauthorized use of said images and is the owner of the exclusive distribution right in the Subject Photograph. Thus, Plaintiff is the exclusive owner of a copyright right in the Subject Photograph under 17 U.S.C. § 106 and the beneficial owner under 17 U.S.C § 501(b) and has standing to bring this action.

11. The Subject Photograph is registered with the United States Copyright Office.

12. Plaintiff is informed and believes and thereon alleges that following its publication and display of the Subject Photograph, Defendants exploited the Subject Photograph without Plaintiff's consent for commercial purposes in various ways, including, but not limited to, the reproduction, distribution, display, and use of the Subject Photograph on the internet, including without limitation on website(s) at <https://www.thenyindependent.com/> ("Infringing Use").

///

///

///

///

///

///

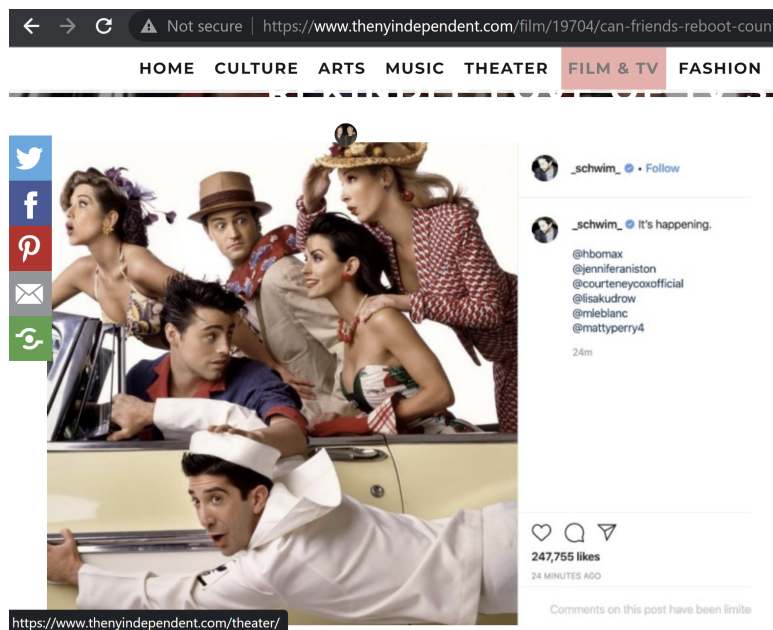
13. An image of the Subject Photograph is shown below:



14. Defendants' websites with Subject Photograph are depicted below:

<https://www.thenyindependent.com/film/19704/can-friends-reboot-count-on-aging-fans-to-rekindle-love-of-tv-show/>

<https://www.thenyindependent.com/film/wp-content/uploads/2020/02/friends.jpg>



15. Plaintiff has been the owner of the exclusive distribution right in the Subject Photograph during the relevant time period.

**FIRST CLAIM FOR RELIEF**

**(For Copyright Infringement - Against All Defendants, and Each)**

16. Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs.

17. Plaintiff alleges on information and belief that Defendants, and each of them, accessed the Subject Photograph by, without limitation, viewing the Subject Photograph on Plaintiff's website or social media profiles, on other sites online, or in physical publications. The identity of the copying also shows access.

18. Plaintiff alleges on information and belief that Defendants, and each of them, copied, reproduced, displayed, and distributed the Subject Photograph as part of the Infringing Use, as depicted above.

19. Plaintiff alleges on information and belief that Defendants, and each of them, infringed Plaintiff's exclusive rights in the copyrights to the Subject Photograph by creating infringing derivative works from the Subject Photograph and publishing and distributing same to the public.

20. Due to Defendants', and each of their, acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

21. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Plaintiff's rights in the Subject Photograph. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Plaintiff's rights in the Subject Photograph in an amount to be established at trial.

22. Plaintiff alleges on information and belief that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and

malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from asserting certain equitable and other defenses in connection with the Subject Photograph.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

**Against all Defendants, and Each:**

**With Respect to Each Claim for Relief:**

- (a) That Defendants, and each of them, as well as their employees, agents, or anyone acting in concert with them, be enjoined from infringing Plaintiff's copyright in the Subject Photograph, including, without limitation, an order requiring Defendants, and each of them, to remove the Subject Photograph from any print, website, or other publication owned, operated and controlled by any Defendant;
- (b) That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants, and each of them, through their infringement, the exact sum to be proven at the time of trial, and, to the extent available, statutory damages as available under the 17 U.S.C. § 504, and other applicable law;
- (c) That a constructive trust be entered over any revenues or proceeds realized by Defendants, and each of them, through their infringement of Plaintiff's rights;
- (d) That Plaintiff recover its attorneys' fees as available under the Copyright Act U.S.C. §505;
- (e) That Plaintiff be awarded its costs and fees under the statutes set forth above;
- (f) That Plaintiff be awarded statutory damages and/or penalties as set forth above;
- (g) That Plaintiff be awarded pre-judgment interest as allowed by law;
- (h) That Plaintiff be awarded the costs of this action; and
- (i) That Plaintiff receive such legal and equitable relief as the Court deems proper.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7<sup>th</sup> Amendment to the United States Constitution.

Dated: February 22, 2023  
New York, New York

Respectfully submitted,

By:



\_\_\_\_\_  
Scott Alan Burroughs, Esq.  
Laura M. Zaharia, Esq.  
DONIGER / BURROUGHS  
247 Water Street, First Floor  
New York, New York 10038  
(310) 590-1820  
scott@donigerlawfirm.com  
lzaharia@donigerlawfirm.com  
Attorneys for Plaintiff